

IN SENATE OF THE UNITED STATES.

MAY 14, 1836.

Read, and ordered to be printed.

Mr. WHITE made the following

REPORT:

The Committee on Indian Affairs, to whom was referred the memorial of John Ross and others, on behalf of the Cherokee Indians, have had the same under consideration, and beg leave to submit the following report :

That, as to all the matters complained of in the said memorial, except the non-payment of interest on the annuity of one thousand dollars, secured by the treaty of 1804, the committee are of opinion a satisfactory answer and explanation are given in a report from the Commissioner on Indian Affairs, hereto attached, and made a part of this report ; and therefore, as to them, no legislative provision is necessary.

The facts upon which the claim to interest on the annuity before mentioned rests, are briefly these :

The said treaty was regularly negotiated and signed on the 24th day of October, 1804, and the United States paid the consideration stipulated, except said annuity, in due season.

On their part, the Cherokees immediately complied with all their stipulations. By some accident or oversight, the treaty never was submitted to the Senate for advice till the spring of the year 1824. That body advised its ratification, and it was ratified, in May, 1824. In 1825, appropriations were made to the amount of twenty-one thousand dollars, to pay the annuity of that year, and those of the *twenty preceding years*, all of which were then in arrear.

Although the committee believe the general rule to be well settled, that the Government ought not to pay interest on any demand against it, while it has been in readiness to pay the principal when regularly applied for, yet they are at a loss for a good reason why interest shall not be paid upon a just claim, when the principal has been withheld by the default of the Government.

In this instance the delay of payment is attributable entirely to the *accidental and unintentional default of the United States* ; the committee are therefore of opinion that, upon a plain principle of justice, interest ought to be paid upon the *twenty* of those annuities, the payment of which was *delayed beyond the time stipulated*, and recommend an amendment to the appropriation bill, which will authorize such payment.

WAR DEPARTMENT, OFFICE INDIAN AFFAIRS,

May 9, 1836.

SIR: I beg leave to submit the following report upon the communication of John Ross and others, of March 16, referred by you to this office.

The preparation of this report has been delayed by the necessity of repeated examination of the correspondence and accounts in this office, and that of the Second Auditor.

The first objection made by these chiefs to the manner in which the annuities for the Cherokees have been disposed of since 1830, and in regard to which they ask an explanation, is, that the payments are not made unless a meeting of the whole tribe is held, to designate the person or persons who shall receive them.

The 11th section of the act of June 30, 1834, organizing the Indian department, provides that the annuity shall be paid to the chiefs or to such person as the tribe shall appoint. To give effect to this provision, the following regulation was prescribed by the President on the 3d of July, 1834:

"Previously to the payments, the agent or sub-agent, and the military officer or officers, will convene the Indians, and ascertain from them in what manner they desire the annuity to be paid; whether to the chiefs of the tribe, to heads of families, or in any other manner."

There are obvious reasons for pursuing this course each year. A majority of the tribe may wish the mode of the preceding year changed, or the person designated to receive it may have died, or may have lost the confidence of his people.

Another objection is, that the ratio of distribution between the eastern and western Cherokees was altered in 1834; and upon an estimate of the numbers of each party furnished by Major Currey, it was the opinion of this department at that time, that the proper construction of the treaty of February 27, 1819, required that the proportions of each should conform to the actual numbers of each. To ascertain these, Major Currey was required, as an agent of the Government, to submit such information as he possessed. "He was permitted to regulate," to quote Mr. Ross's words, nothing. He did only what he was called upon to do. As the division is now made in conformity with the terms of the treaty of 1819, it is necessary only to add, that the error made in 1834 will be corrected this year, by paying to the eastern Cherokees the sum of one thousand and forty-one dollars and sixty-seven cents, (\$1,041 67,) the amount then paid to the western Cherokees.

The next objection is, that the sum of three hundred and nine dollars and eighty-three cents (\$309 83) was improperly withheld from them in 1834. The enclosed statement shows that the whole amount of their proportion of the annuities for 1831, '32, '33, and '34, has been paid, except the sum of one thousand and forty-one dollars and sixty-seven cents (\$1,041 67) over-paid the western Cherokees in 1834, which the department will refund at the next payment.

The accounts have been examined as far back as 1829, and the same balance was then reported. It is probable that in this case, as in others occurring before expenditures were confined by specific appropriations, that appropriations for other objects were paid out on account of the an-

nuity. If so, this balance will be required to make good such appropriations, upon the final settlement of accounts. There are considerable balances of annuities for other tribes in the treasury, which have accrued in the same way.

But it is further objected that a part of this sum, amounting, he says, to one thousand eight hundred and eighty-one dollars and sixty-seven cents, (\$1,881 67,) has been paid to emigrant Cherokees. The true amount is, one thousand five hundred and fourteen dollars and fifty cents, and it would seem was properly paid to the persons who have receipted for it. While they remained east of the river Mississippi, they might at any time claim their proportion of the annuities for 1831, '32, and '33. If it had been paid to emigrated Cherokees, the payment would have been wrong, as such Indians were entitled to participate only in the one-third allowed the western Cherokees. By the payment to those who were about to remove, they were enabled to provide conveniences upon their journey. The other sum of six hundred and seventy-seven dollars, (\$677,) appears to have been paid from time to time, to individual Cherokees who, dissenting from the majority, chose to receive their shares of the annuities for 1831.

The result of the examination is, that the eastern Cherokees must be paid this year, the sum of one thousand and forty-one dollars and sixty-seven cents, (\$1,041 67,) paid the western Cherokees in 1834.

Very respectfully, &c.

ELBERT HERRING.

HON. LEWIS CASS,
Secretary of War.

Statement showing the amount of annuities due to the eastern Cherokees for the years 1831, '32, '32, and '34, and the amount paid on same.

Amount of annuity for 1831, -	-	-	-	\$6,666 67
Amount of annuity for 1832, -	-	-	-	6,666 67
Amount of annuity for 1833, -	-	-	-	6,666 67
Amount of annuity for 1834, -	-	-	-	6,666 67
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				\$26,666 68
On ac't of annuity for 1831.	{	Amount paid from 19th June, 1831, to 16th November, 1831, -	-	\$352 50
		Amount paid from November 19, 1831, to April 13, 1832, -	-	188 50
		Amount paid from March 5, 1832, to July 12, 1832, -	-	136
		Amount paid from December 20, 1833, to March 13, 1834, -	-	1,514 50
Amount paid December 17, 1834, to John Mar- tin, -	-	-	-	23,433 51
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				25,625 01
Balance over-paid to western Cherokees in 1834, (and now to be refunded,) -				-
				<hr/>
				\$1,041 67

